

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 14048, of Hudai Yavalar, pursuant to Paragraph 8207.11 of the Zoning Regulations, for variances from the lot occupancy requirements (Sub-section 3303.1 and Paragraph 7105.12) and the rear yard requirements (Sub-section 3304.1) to construct an addition to a non-conforming structure housing a dwelling unit and, in part, a non-conforming grocery store use in an R-3 District at premises 1643 - 34th Street, N.W., (Square 1278, Lot 848).

HEARING DATE: October 19, 1983
DECISION DATE: November 2, 1983

FINDINGS OF FACT:

1. The subject site is located at the southeast corner of the intersection of Dent Place and 34th Street and is known as premises 1643 34th Street, N.W. It is in an R-3 District.

2. The site has a lot area of 1,188 square feet. It has seventy-two feet of frontage on Dent Place and 16.50 feet of frontage on 34th Street. The site is flat and rectangular in shape.

3. The site is improved with a nonconforming structure that houses a dwelling unit and a nonconforming grocery store use. The store front faces 34th Street. The residence fronts on Dent Place. The side of the building facing 34th Street constitutes the front of the structure. The structure was built prior to 1958.

4. The applicant requests approval of the Board for an addition to the structure. The addition measures seven feet deep and 16.50 feet wide. The addition will provide more family living space for the dwelling unit. The addition will replace an old dilapidated rear deck and steps. When completed, the structure with the addition will extend to the same depth as the adjoining residence to the south.

5. The subject addition was partially constructed without proper permits. At the time of the hearing, the addition was some ninety-five percent completed.

6. The subject structure is nonconforming as to the lot occupancy requirements. The R-3 District permits a

maximum lot occupancy of sixty percent, or for the subject lot, 712.8 square feet. The lot occupancy without the 115.5 square feet of the proposed addition is 825 square feet. With the addition, 940 square feet will be provided, creating a need for a variance of 227 square feet or 31.9 percent.

7. The addition will result in a rear yard of fifteen feet. The Zoning Regulations require a minimum rear yard of twenty feet. The applicant seeks a rear yard variance of five feet or twenty-five percent. In relation to 34th Street, this yard is a rear yard. In relation to Dent Place, the space appears as a side yard.

8. Certificate of Occupancy No. B135808 was issued August 1, 1983, to the applicant to use the first floor of the subject premises as a retail-grocery, basement for storage.

9. A Class "B" Alcoholic Beverage Control License No. 6409 was issued to the applicant for the period of October 21, 1983 to June 30, 1984.

10. The Commission of Fine Arts, by letter of March 1, 1983, recommended that a permit be issued to the applicant for the removal of artificial brick siding and restoration of wood siding underneath for the grocery store portion of the building. The Commission noted that the drawings had been altered to show three vertical muntins in the side show windows. Work on the adjacent house was not included in this approval.

11. There were many letters of record in favor of the application. Said letters reported that prior to the restoration of the structure, the property was neglected. It had become an eyesore in the neighborhood. Through the restoration, the ugly imitation brick exterior had been removed, the premises had been repainted and the premises was more in harmony with the surrounding properties. There was also a petition with many signatures in favor of the application submitted to the record.

12. The Citizens Association of Georgetown opposed the application on the following grounds:

- a. The existing structure already exceeds the allowable lot occupancy. The proposed addition would double the non-conformity of lot coverage and would require a thirty-two percent variance, which is excessive.
- b. The existing, rear yard would be reduced by twenty-five percent. This is a corner lot that does not back up to another rear yard or alley.

Granting a variance to reduce the rear yard would place the proposed addition too close to the adjoining property.

- c. The resultant overdevelopment of the lot would undermine one of the most important zoning controls in an R-3 District; i.e., the lot coverage limitation.
- d. The structure is quite habitable without the addition and the property can be used in a reasonable manner and has been for many years within the restrictive provisions of the zoning regulations.
- e. There are no exceptional or extraordinary conditions of the property which create a practical difficulty for the owner and that could form the legal basis for granting a variance.

At the close of the applicant's case-in-chief, the Citizens Association of Georgetown made a motion to deny or dismiss the application for failure of proof. The Chair denied the motion.

13. Advisory Neighborhood Commission 2E, by letter dated October 11, 1983, and appearance at the public hearing, opposed the application on the same grounds enumerated by the Citizens Association. The ANC reported that it had further concerns. It was the ANC's opinion that the building permit that had been issued to the applicant was issued only for repairs to be made to the store. The ANC contended that the applicant used the permit not only to repair the store but to build his addition.

14. The Advisory Neighborhood Commission reported that, by letter of June 3, 1983, the Commission requested the Corporation Counsel to open an investigation of this matter. The Commission further advised the Corporation Counsel that on April 20, 1983, a letter was sent from the Citizens Association of Georgetown to the Zoning Administrator, reporting that certain work was being carried out at the subject address, which was not covered by the permit for repairs. On May 13, 1983, Mr. Leslie C. Reid, a D.C. Building Inspector, issued a stop-work order to the owner's agent after inspecting the project and confirming the Association's allegations. The permittee or his agents unlawfully continued such non-permitted work, despite such written stop-work order, for at least the next four days, May 14-17, 1983. Work was finally stopped on May 17, 1983, at 7:00 P.M. During the period, April 20 to May 13, 1983, there were approximately eighteen days of separate violations of the Building Code. On May 13, the stop-work order was issued. During the period, May 14 to 17, 1983, inclusive, there were an additional four days of violations

of the Building Code. Thus, there are apparently twenty-two days of alleged separate violations of D.C. Law. The ANC further reported that the community considers the unlawful actions of the permittees a gross violation of the law that should not go uncorrected. The owner has attempted to deny the District revenue due for the correct building permits, and he has mis-stated facts to the neighbors as to whether he had the proper permits. Finally, he has defied a direct written stop-work order from the D.C. Building Inspector.

15. On June 6, 1983, the Corporation Counsel advised the ANC that it had referred the matter to the Housing and Community Development Division for a further inquiry and appropriate action.

16. The Board is required by statute to give "great weight" to the issues and concerns of the ANC. The Board in addressing these concerns as well as those of the Citizens Association of Georgetown finds that in the first instance the Board is concerned with zoning issues. The Board has no jurisdiction over alleged violations of building permits and illegal acts. Such is the jurisdiction of the District Consumer and Regulatory Affairs and the Corporation Counsel. As to the variance relief, the Board for reasons discussed in its Conclusions, finds that the applicant has met his burden of proof in establishing that a practical difficulty exists in the property that warrants the granting of the variance relief.

CONCLUSIONS OF LAW AND OPINION:

Based on the record, the Board concludes that the applicant is seeking two area variances, the granting of which requires proof through substantial evidence of a practical difficulty upon the owner of the property arising out of some extraordinary or exceptional situation or condition of the property. The Board must further find that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the zone plan.

The Board concludes that the applicant has met the burden of proof. In comparison to the normal R-3 District standards, the subject lot is a small lot. A lot area of 2000 square feet is permitted. This lot provides 1,188 square feet. A lot width of twenty feet is permitted. This lot provides a 16.50 width. The structure was erected prior to May 12, 1958, the effective date of the current Zoning Regulations. On May 12, 1958, it became nonconforming as to its lot occupancy. The subject addition is a replacement for the deck and steps now demolished. It is a fill-in for what had previously existed on the site. As to the depth of the rear yard, there is no persuasive evidence in the record that it ever had a depth more than fifteen feet. Also,

there is no question that the structure was used as a residence in the past and that in the future the use will so continue. Such does not preclude a renovation of the premises.

The Board notes the many letters of record from neighborhood owners of property reporting the run-down condition of the property and how pleased all were that it was being renovated so that it would cease to be an eyesore in the neighborhood. The Board, for all the above reasons, concludes that the burden of proof has been met. The Board concludes that it has accorded to the ANC the "great weight" to which it is entitled, but for the reasons stated, the application should be granted. Accordingly, it is ORDERED that the application is GRANTED.

VOTE: 4-0 (Douglas J. Patton, William F. McIntosh and Charles R. Norris to grant; Walter B. Lewis to grant by proxy; Carrie L. Thornhill not voting, not having heard the case).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:


STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER: APR - 5 1984

UNDER SUB-SECTION 8204.3 OF THE ZONING REGULATIONS, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

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